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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 THOMAS LEE HOPE,) No. ED CV 10-93 PJW
11 Plaintiff,)
12 v.) MEMORANDUM OPINION AND ORDER
13 MICHAEL J. ASTRUE,)
14 Commissioner of the)
15 Social Security Administration,)
16 Defendant.)
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18 I.

19 INTRODUCTION

20 Plaintiff appeals a decision by Defendant Social Security
21 Administration ("the Agency"), denying his application for
22 Supplemental Security Income ("SSI") benefits. He claims that the
23 Administrative Law Judge ("ALJ") erred when he: (1) determined that
24 Plaintiff could perform medium work; and (2) found that Plaintiff was
25 not credible. (Joint Stip. at 3-7, 14-16.) Because the Agency's
26 decision that Plaintiff was not disabled within the meaning of the
27 Social Security Act is supported by substantial evidence, it is
28 affirmed.

1 II.

2 SUMMARY OF FACTS AND PROCEEDINGS

3 Plaintiff applied for SSI on June 18, 2007, alleging that he had
4 been unable to work since February 2, 2006, because of a breathing
5 impairment. (Administrative Record ("AR") 76, 102.) The Agency
6 denied his application initially and on reconsideration. (AR 35-48.)
7 Plaintiff then requested and was granted a hearing before an ALJ. (AR
8 49, 53-54.) In May 2009, he appeared with counsel and testified at
9 the hearing. (AR 17-34.) On September 15, 2009, the ALJ issued a
10 decision denying benefits. (AR 7-16.) Plaintiff appealed to the
11 Appeals Council, which denied review. (AR 1-5.) He then commenced
12 the instant action.

13 III.

14 ANALYSIS

15 A. The ALJ's Residual Functional Capacity Determination

16 1. Plaintiff's Grip Strength

17 Plaintiff contends that the ALJ's determination that he could
18 perform medium-level work--which requires that he occasionally lift
19 and carry 50 pounds--was inconsistent with the examining doctor's
20 finding that Plaintiff's grip strength was 40 pounds in his right hand
21 and 30 pounds in his left hand. (Joint Stip. at 4-5.) Plaintiff
22 argues, it seems, that, to be able to lift 50 pounds, a person has to
23 have grip strength equal to or greater than 50 pounds. (Joint Stip.
24 at 4.) For the following reasons, the Court finds that Plaintiff is
25 simply mistaken.

26 Grip strength is not synonymous with lifting ability. See
27 *Bauslaugh v. Astrue*, 2010 WL 1875800, at *5 (C.D. Cal. May 11, 2010)
28 ("[U]nder the Regulations, the ability to grip and grasp is not

1 related to the ability to lift and carry."). Grip strength measures
2 the force grip of a hand and "represents the power of squeezing
3 between the thumb and fingers." *Chambers v. Shalala*, 1995 WL 228965,
4 at *2 n.7 (N.D. Ill. Apr. 14, 1995). Lifting involves picking up a
5 load with the legs, arms, and torso. Plaintiff's attempt to equate
6 the two is rejected, as is his argument that the ALJ erred when he
7 concluded that Plaintiff could lift 50 pounds despite the fact that
8 his grip strength was less than 50 pounds.

9 2. Dr. To's Failure to Take X-Rays

10 Plaintiff argues that examining doctor Bryan To's opinion was
11 defective because he failed to order x-rays of Plaintiff's joints,
12 despite Plaintiff's complaints of joint pain. (Joint Stip. at 5.)
13 The Court finds this claim to be without merit.

14 Dr. To first examined Plaintiff in August 2007. (AR 175-79.) He
15 found, among other things, that Plaintiff's gait was normal and that
16 he had a full range of motion in his extremities. (AR 176, 177.) Dr.
17 To concluded that Plaintiff could lift 50 pounds occasionally and 25
18 pounds frequently; stand and walk for six hours in an eight-hour
19 workday; and frequently climb ladders, bend, kneel, stoop, crawl, and
20 crouch. (AR 178.) He recommended that Plaintiff be restricted from
21 exposure to extreme temperatures, moisture, fumes, and dust. (AR
22 179.)

23 In October 2007, Dr. To examined Plaintiff again. (AR 181-89.)
24 He noted Plaintiff's complaints of joint pain, swelling, and
25 stiffness, but found that his gait was normal, as were muscle tone and
26 mass, and that there was no evidence of deformity, swelling, or
27 tenderness in any joint. (AR 181, 182, 184.) Although he noted that
28 Plaintiff complained of "some vague range of motion pain," Dr. To

1 found that the range of motion was normal. (AR 183, 184.) He also
2 found that Plaintiff's motor function and motor strength were normal.
3 (AR 184.) Based on these findings, he came to the same conclusions
4 regarding Plaintiff's functional abilities as he had in August 2007.
5 (AR 184-85.)

6 Without citing any authority--legal, medical, or otherwise--
7 Plaintiff argues that Dr. To could not assess Plaintiff's alleged
8 joint pain without taking x-rays. (Joint Stip. at 5.) This argument
9 is not remotely persuasive. The Court is not aware of any evidence--
10 within or without this record--that suggests that doctors cannot
11 assess joint pain without an x-ray and, therefore, are mandated to
12 obtain x-rays in formulating their opinions. Thus, there is no basis
13 whatsoever for this Court to conclude that x-rays were required in
14 this case. As such, this claim is rejected.

15 3. Additional Limitations Overlooked By The ALJ

16 Plaintiff complains that the ALJ failed to consider all of his
17 limitations in determining residual functional capacity. (Joint Stip.
18 at 3-7.) He points out, for example, that he had been diagnosed with
19 chronic obstructive pulmonary disease ("COPD"), suffered from chest
20 pain, vomited blood, and, though 5'-7" tall, weighed only 130 to 140
21 pounds. (Joint Stip. at 4.) For the following reasons, the Court
22 finds this argument without merit.

23 The ALJ concluded that Plaintiff could perform medium work if the
24 air was clean and the temperature not too extreme. (AR 12.) This
25 conclusion was based on the opinions of Dr. To, the examining
26 physician, and Dr. Yee, the reviewing physician. (AR 12-14.) The ALJ
27 was entitled to rely on these doctors in formulating his residual
28 functional capacity finding and nothing in those records contradicts

1 the ALJ's finding. See *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
2 Cir. 2001) (holding examining physician's opinion based on independent
3 examination constituted substantial evidence to support ALJ's residual
4 functional capacity finding). That is especially true where, as here,
5 Dr. To's opinion is uncontradicted.

6 It is not clear to the Court how the fact that Plaintiff had
7 COPD, had experienced chest pains, had vomited blood, and weighed 130-
8 140 pounds precluded him from working, even if all of these
9 allegations were to be believed. Regarding Plaintiff's COPD, Dr. To
10 was aware of Plaintiff's COPD when he examined him. (AR 178, 184.)
11 Dr. To found, however, that Plaintiff's lungs were clear. (AR 178,
12 184.) Dr. To performed a pulmonary function test to test Plaintiff's
13 respiratory system and found it to be normal. (AR 186.) Ultimately,
14 Dr. To concluded that Plaintiff's respiratory problems required a
15 slightly restrictive working environment but did not preclude work.
16 (AR 184-85.)

17 Thus, it is not as if Dr. To, and consequently, the ALJ, ignored
18 Plaintiff's alleged COPD. Aware of Plaintiff's COPD, the examining
19 doctor tested Plaintiff and concluded that he could still work in the
20 right environment and the ALJ properly relied on this opinion in
21 reaching the same conclusion.

22 A similar analysis applies to Plaintiff's complaints about chest
23 pains and vomiting blood. The record establishes that they were
24 isolated incidents and Plaintiff was not hospitalized for them.
25 Rather, he was released from the emergency room the same day. (AR
26 134, 154.) As to his chest pains, Plaintiff's treating doctor noted
27 on the discharge instructions: "Based on your exam today, the exact
28 cause of your chest pain is not certain. Your condition does not seem

1 serious at this time, and your pain does not appear to be coming from
2 your heart." (AR 152.) The records from his emergency room visit
3 regarding the time he vomited blood are even less compelling. They
4 are only three pages long and do not explain what if anything the
5 doctors believed had happened to Plaintiff. (AR 154-56.) Whatever
6 they found, they did not think that Plaintiff's condition required
7 additional treatment. Plaintiff has not suggested how these isolated
8 incidents would prevent him from working.

9 Finally, Plaintiff's claim that the ALJ erred because he did not
10 take into account the fact that Plaintiff was 5'-7" tall and weighed
11 in the 130-140 pound range is specious. Nothing about Plaintiff's
12 weight, on its face, suggests that it precludes employment. Nor has
13 Plaintiff explained how it does. Presumably, he is arguing that he is
14 too skinny to work. Assuming that that is what he is claiming, this
15 argument is rejected out of hand.

16 B. The Vocational Expert's Testimony

17 The ALJ determined that Plaintiff's limitations prevented him
18 from performing his prior work as a painter and called a vocational
19 expert to testify about whether Plaintiff could perform other work.
20 (AR 31-34.) She determined that Plaintiff was capable of working as a
21 kitchen helper, machine feeder, and hand packager. (AR 15.)
22 Plaintiff contends that the ALJ erred when he failed to include all of
23 Plaintiff's limitations, i.e., joint pain, COPD, and learning
24 disability, in the hypothetical question to the vocational expert.
25 (Joint Stip. at 6-7.) Again, the Court disagrees.

26 An ALJ may limit a hypothetical question to only those
27 restrictions that are credible and supported by substantial evidence
28 in the record. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217-18 (9th Cir.

1 2005). Here, the ALJ's hypothetical question properly reflected Dr.
2 To's and Dr. Yee's conclusions about Plaintiff's conditions, which the
3 ALJ incorporated into his residual functional capacity finding. In
4 short, the ALJ determined that Plaintiff could perform medium work in
5 an environment free of dust, fumes, and temperature extremes. (AR
6 178, 184, 190-193.) The ALJ did not err in failing to include in the
7 hypothetical question other limitations alleged by Plaintiff that were
8 either not supported by the record or did not impact his ability to
9 work.

10 Plaintiff argues that the combination of his limitations, in
11 particular the environmental limitations, would significantly reduce
12 the number of jobs identified by the vocational expert. (Joint Stip.
13 at 6-7.) The record does not support this claim.

14 The ALJ asked the vocational expert whether a person who could
15 not read or write and was limited to medium work in an environment
16 without dust, fumes, and extreme temperatures could perform any work.
17 (AR 31.) The expert testified that, consistent with the Dictionary of
18 Occupational Titles ("DOT"), such a person could work as a kitchen
19 helper, hand packager, or machine feeder. (AR 31-32.) As the
20 vocational expert made clear, in reaching this conclusion, she had,
21 for example, reduced the number of hand packager jobs by 50% to
22 account for Plaintiff's limitations, including his inability to read
23 and write. (AR 33.) Thus, a fair reading of the record establishes
24 that the vocational expert took into account Plaintiff's limitations
25 as set forth in the hypothetical. Plaintiff has not offered any
26 evidence to the contrary. For that reason, the Court finds that the
27 ALJ did not err in relying on her. *See Johnson v. Shalala*, 60 F.3d
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1 1428, 1435 (9th Cir. 1995) (holding ALJ is allowed to rely on
2 vocational expert's testimony even if it contradicts DOT).¹

3 C. The ALJ's Credibility Determination

4 In his final claim of error, Plaintiff argues that the ALJ
5 failed to identify which portions of Plaintiff's testimony he found
6 incredible and failed to provide clear and convincing reasons for
7 rejecting Plaintiff's complaints. (Joint Stip. at 14-16.) For the
8 following reasons, the Court disagrees.

9 ALJ's are tasked with judging the credibility of witnesses.
10 Where a claimant has produced objective medical evidence of an
11 impairment which could reasonably be expected to produce the symptoms
12 alleged and there is no evidence of malingering, the ALJ can only
13 reject the claimant's testimony for specific, clear, and convincing
14 reasons. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 (9th Cir. 1996). In
15 making a credibility determination, the ALJ may take into account
16 ordinary credibility evaluation techniques. *Id.* at 1284.

17 At the hearing, Plaintiff alleged that he suffered from chest
18 pain, joint pain, and respiratory problems, which made it impossible
19 for him to stand for more than 20 to 30 minutes at a time or walk for
20 more than 15 to 20 minutes. (AR 25.) The ALJ found that this
21 testimony was not fully credible. (AR 13.) He noted that there was
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24 ¹ Even assuming that the vocational expert had failed to reduce
25 the number of the other jobs to account for Plaintiff's limitations,
26 with regard to hand packager jobs, after reducing them by 50% to
27 account for Plaintiff's limitations, there still remained 50,000 jobs
28 nationally and 3,500 locally. (AR 14.) Clearly, this was more than
enough to support the ALJ's finding that there were a significant
number of jobs in the economy. See, e.g., *Moncada v. Chater*, 60 F.3d
521, 524 (9th Cir. 1995) (holding 64,000 jobs nationally and 2,300
jobs locally is enough).

1 no medical evidence to validate Plaintiff's orthopedic complaints and
2 that the record showed that Plaintiff's lungs were relatively normal,
3 with good oxygen flow. (AR 13.) These were legitimate reasons to
4 discount Plaintiff's testimony, *see Osenbrock v. Apfel*, 240 F.3d 1157,
5 1165-66 (9th Cir. 2001) (upholding ALJ's credibility determination in
6 part because evaluations revealed little evidence of disabling
7 abnormality), and are supported by the record. Upon examination, Dr.
8 To found no evidence of respiratory failure and no evidence of joint
9 deformity or tenderness. (AR 177, 183.) A pulmonary function test
10 revealed that Plaintiff's pulmonary function was normal. (AR 186.)
11 Furthermore, when Plaintiff's lung volume was measured by nitrogen
12 washout, the results showed total lung capacity, vital capacity, and
13 residual volume to be within normal limits. (AR 221.)

14 Additionally, the ALJ found that Plaintiff's treating physicians
15 responded to his condition with only limited and conservative
16 treatment. (AR 13.) This, too, was a legitimate reason for
17 discounting a claimant's credibility, *see, e.g., Meanel v. Apfel*, 172
18 F.3d 1111, 1114 (9th Cir. 1999) ("[T]he ALJ properly considered [the
19 treating physician's] failure to prescribe . . . any serious medical
20 treatment for this supposedly excruciating pain"), and is supported by
21 the record. For these reasons, the Court concludes that the ALJ did
22 not err in finding that Plaintiff was not credible.

23 IV.

24 CONCLUSION

25 For the reasons set forth above, the Court finds that the
26 Agency's findings are supported by substantial evidence and are free
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1 from material legal error. The decision of the Agency is, therefore,
2 affirmed.

3 IT IS SO ORDERED.

4 Dated: May 30, 2011

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7 PATRICK J. WALSH
8 UNITED STATES MAGISTRATE JUDGE
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